

Connecticut Siting Council

Petition for Declaratory Ruling for Renewable Energy Facility

September 2012

A “**renewable energy facility**” is any electric generating or storage facility using renewable energy sources, including, but not limited to solar photovoltaic, solar thermal, wind, fuel cells, ocean thermal, wave or tidal, geothermal, landfill gas, hydropower, or biomass. (Conn. Gen. Stat. §16-50i(a)(3); Conn. Gen. Stat. § 16-1)

Potential applicants are urged to carefully review Connecticut General Statutes § 16-50k(a) to determine whether the proposed project falls within the petition for declaratory ruling process that applies to fuel cells (unless the Council finds a substantial adverse environmental effect), customer-side distributed resource projects or grid-side distributed resource projects or facilities with a capacity of 65 megawatts or less (as long as such project meets air and water quality standards of the Department of Environmental Protection).

Applicants should consult Connecticut General Statutes §§ 16-50g through 16-50aa, and § 16a-7c, and Sections 16-50j-1 through 16-50z-4 of the Regulations of Connecticut State Agencies to assure complete compliance with the requirements of those sections. Where appropriate, statutory and regulatory references are noted below.

A. Request for Petition

Any interested person may at any time request a declaratory ruling of the Council with respect to the applicability to such person of any statute, or the validity or applicability of any regulation, final decision, or order enforced, administered, or promulgated by the Council. Such request shall be addressed to the Council and sent to the principal office of the Council by mail or delivered in person during normal business hours. The request shall be signed by the person in whose behalf the inquiry is made. It shall give the address of the person inquiring and the name and address of such person’s attorney, if applicable. The request shall:

1. state clearly and concisely the substance and nature of the request;
2. identify the statute, regulation, final decision, or order concerning which the inquiry is made and shall identify the particular aspect to which the inquiry is directed;
3. be accompanied by a statement of any supporting data, facts and arguments that support the position of the person making the inquiry; and
4. be accompanied by exhibits detailing any supporting data including but not limited to, where applicable, maps, drawings, diagrams and technical specifications.

B. Request for Participation

Where applicable, Sections 16-50j-13 through 16-50j-17 of the Regulations of Connecticut State Agencies govern the request for participation in the proceeding. (Regs., Conn. State Agencies §16-50j-39)

C. Notice

Prior to submitting a petition for a declaratory ruling to the Council, the petitioner shall, where applicable, provide notice to each person other than the petitioner appearing of record as an owner of property which abuts the proposed primary or alternative sites of the proposed facility, each person appearing of record as an owner of the property or properties on which the primary or alternative proposed facility is to be located, and the appropriate municipal officials and government agencies. Proof of such notice shall be submitted with the petition for declaratory ruling. These notice requirements are applicable to proposed facilities that, by statute, are required to be approved by a declaratory ruling in lieu of a certificate under Section 16-50k of the Connecticut General Statutes, and to petitions for a declaratory ruling that the subject of the petition does not constitute a facility. The term “appropriate municipal officials and government agencies” means, in the case of a facility required to be approved by declaratory ruling, the

same officials and agencies to be noticed in the application for a certificate under Section 16-50l of the Connecticut General Statutes. Petitioners seeking a declaratory ruling where the subject of the petition is not a facility, shall serve notice to the chief elected official of the municipality where the proposed project is located in whole or in part. Within thirty (30) days after receipt of a petition for a declaratory ruling, the Council shall give notice of the petition to all persons to whom notice is required by any provision of law and to all other persons who have requested notice of declaratory ruling petitions on the subject matter of the petition. The notice provided by the Council shall provide contact information for the Council, a timeline for public involvement and the date, place and time for any scheduled field review of the proposed project. The Council may receive and consider data, facts, arguments, and opinions from persons other than the persons requesting the ruling. (Regs., Conn. State Agencies § 16-50j-40 (a))

D. Hearing

If the Council deems a hearing necessary or helpful in determining any issues concerning the request for a declaratory ruling, the Council shall schedule such hearing and give notice thereof as shall be appropriate. (Regs., Conn. State Agencies § 16-50j-40 (b))

E. Decision

Within sixty (60) days after receipt of a petition for a declaratory ruling, the Council, in writing, shall:

1. Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified proceedings;
2. Order the matter set for a specified proceeding;
3. Agree to issue a declaratory ruling by a specified date;
4. Decide not to issue a declaratory ruling and initiate regulation-making proceedings under Connecticut General Statutes § 4-168 on the subject; or
5. Decide not to issue a declaratory ruling, stating the reasons for its action. (Regs., Conn. State Agencies § 16-50j-40 (c))

F. Notice of Decision

A copy of all rulings issued and any actions taken shall be promptly delivered to the petitioner and other parties personally or by United States mail, certified or registered, postage pre-paid, return receipt requested. A declaratory ruling shall contain the names of all parties to the proceeding, the particular facts in which it is based, and the reasons for its conclusion. (Regs., Conn. State Agencies § 16-50j-40 (d))

G. Filing Fee

The petitioner must submit an original and 15 copies of its petition with a \$625 filing fee. The expenses incurred for a field inspection shall not exceed \$500 per review. Assessments shall be made to cover all other expenses incurred by the Council. Any fees which are in excess of the actual expenses of the Council will be refunded to the petitioner. (Conn. Gen. Stat. §4-189j; Regs., Conn. State Agencies §§ 16-50v-1a (a), 16-50v-1a (c), and 16-50v-1a (e))

H. Environmental Justice Public Participation Plan

For electric generation projects that qualify for expedited siting under C.G.S. §16-50k(a) or for electric generation projects that otherwise qualify for a declaratory ruling, the Council urges project proponents to comply with the spirit of the Environmental Justice Act despite its explicit reference to a “certificate under Chapter 277a.” The Council is working closely with the DEP on meeting the requirements of the Act and project proponents should consult with DEP’s Environmental Justice Program to verify compliance with all of the necessary terms and conditions.

Pursuant to Conn. Gen. Stat. §22a-20a, applicants seeking to obtain any certificate under PUESA, a new or expanded permit or siting approval from the Siting Council or DEP involving an “**affecting facility**” (defined in part as an electric facility with a capacity of more than ten megawatts, but see exception contained in section C below)

that is proposed to be located in an “**environmental justice community**” (defined as a U.S. census block group for which 30% or more of the population consists of low income persons with income below 200% of the federal poverty level or a “distressed municipality” as defined under C.G.S. §32-9p), or the proposed expansion of an “affecting facility” located in such community shall file a “Meaningful Public Participation Plan.”

The definition of “**affecting facility**” does NOT include (i) the portion of an electric generating facility that uses nonemitting and nonpolluting renewable resources such as wind, solar and hydropower or that uses fuel cells; (ii) any facility for which a certificate of environmental compatibility and public need was obtained from Council on or before January 1, 2000; or (iii) a facility of a constituent unit of the state system of higher education that has been the subject of an environmental impact evaluation in accordance with the provisions of sections 22a-1b to 22a-1h inclusive, of the General Statutes and such evaluation has been determined to be satisfactory in accordance with Section 22a-1e of the General Statutes.

This overview is designed to answer general questions and provide basic information. Reference should be made to the appropriate statutes and regulations for specific regulatory language. Asserting a person’s rights and privileges is his or her responsibility. A person has the prerogative, though not the obligation, to obtain legal counsel.